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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/583,977	06/22/2006	Stefan Johan Koppelman	677132000200	8397

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MORRISON & FOERSTER LLP
12531 HIGH BLUFF DRIVE
SUITE 100
SAN DIEGO, CA 92130-2040

EXAMINER

ROONEY, NORA MAUREEN

ART UNIT	PAPER NUMBER
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1644

NOTIFICATION DATE	DELIVERY MODE
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02/03/2011

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

EOfficeSD@mofo.com

Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)	
	10/583,977	KOPPELMAN ET AL.	
	Examiner	Art Unit	
	NORA M. ROONEY	1644	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 17 December 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: 21 and 22.
- Claim(s) withdrawn from consideration: 17-20.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Nora M Rooney/
Primary Examiner, Art Unit 1644

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's argument with respect to claims 17-20 being withdrawn has been fully considered, but is not found persuasive. Claims 17-20 are directed to an in vitro method and the elected invention is an in vivo method. The Examiner has examined claims having to do with an in vivo method. If Applicant were to make claims 17-20 dependent upon the in vivo method, then they would be part of the elected invention. However, such is not the case so the claims are withdrawn.

Applicant's argument with regard to the finality of the claims being necessitated by amendment has been fully considered, but is not persuasive. Any rejection to the claims presented in the Office Action mailed on 08/17/2010 are necessitated by the amendment because all of the claims were newly presented in the amendment filed on 05/28/2010. The Examiner had no other option than to reject the claims as necessitated by the amendment due to Applicant's cancellation of all previous claims. Because the Examiner was given the option, the Examiner opted to go with the stronger rejection for the new claims in the Final Rejection of the newly presented claims.

Applicant's arguments with respect to the rejection of claims 21-22 as being unpatentable over WO 02/074250 in view of Bartolome et al. has been fully considered, but is not found persuasive. Applicant implied that Bartolome teaches away. Contrary to Applicant's assertion, the reference does not teach that allergenicity of the 2S albumin is not reduced under reducing conditions. Rather, the reference teaches that in one patient IgE binds to the subunits under reducing conditions. The reference does not teach whether or not the IgE binding capacity of the intact protein in non-reducing conditions is comparable to the IgE binding capacity of the two subunits particularly since it is noted that in Figure 4 the patient's serum is diluted 1:5 in the immunoblotting under non-reducing conditions. Further, the Bartolome reference is being relied on for its teaching that the stable conformational structure of Ber e 1 contributes to its allergenicity. The art of WO 02/074250 teaches that the allergens should be modified by reducing the disulfide bonds and alkylating the resultants, not just reducing the disulfide bonds alone. Had reduction alone been sufficient, WO 02/074250 would probably not be directed to a process of reducing and alkylating the allergens. As such, there is motivation to combine the references to result in the claimed invention.